

SERVED: May 6, 1999

NTSB Order No. EA-4762

UNITED STATES OF AMERICA  
**NATIONAL TRANSPORTATION SAFETY BOARD**  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 6th day of April, 1999

_____	)	
JANE F. GARVEY,	)	
Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	Docket SE-15137
v.	)	
	)	
FREDERIC G. BENNETT,	)	
	)	
Respondent.	)	
_____	)	

**OPINION AND ORDER**

The Administrator appeals the oral initial decision of Administrative Law Judge William R. Mullins, issued at the conclusion of an evidentiary hearing held on June 4, 1998.<sup>1</sup> By that decision, the law judge affirmed the Administrator's order charging respondent with violating sections 61.15(d)

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<sup>1</sup> An excerpt from the hearing transcript containing the law judge's initial decision is attached.

and 61.15(e), 14 CFR Part 61, of the Federal Aviation Regulations ("FARs"), but modified the Administrator's order of revocation to a 6-month suspension of respondent's Air Transport Pilot ("ATP") and flight instructor certificates. We grant the appeal.<sup>2</sup>

The record establishes that respondent was convicted on December 2, 1994, for driving under the influence of alcohol, and that, on December 30, 1996, and June 13, 1997, the State of Arkansas imposed administrative suspensions upon respondent's driver's license for refusing, during the course of two separate traffic stops, to submit to a breath test. The Administrator previously imposed a 30-day suspension of respondent's pilot certificate for failing to

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<sup>2</sup> FAR § 61.15 provides, in relevant part, as follows:

**§ 61.15 Offenses involving alcohol or drugs.**

\* \* \* \* \*

(d) Except in the case of a motor vehicle action that results from the same incident or arises out of the same factual circumstances, a motor vehicle action occurring within 3 years of a previous motor vehicle action is grounds for --

\* \* \* \* \*

(2) Suspension or revocation of any certificate or rating issued under this part.

(e) Each person holding a certificate issued under this Part shall provide a written report of each motor vehicle action to the FAA, Civil Aviation Security Division (AAC-700), P.O. Box 25810, Oklahoma City, OK 73125, not later than 60 days after the motor vehicle action. . . .

report the 1994 motor vehicle action. This case ensued as a result of respondent's failure to report the 1996 and 1997 administrative suspensions, and because respondent has had three motor vehicle actions imposed within three years.

The only issue before us is the law judge's change of respondent's sanction. We disagree with the law judge's assessment that revocation under the circumstances is too "harsh," or, in other words, apparently, unnecessary given that respondent's medical certificate has already been indefinitely suspended pending resolution of his apparent alcohol problem. Respondent, despite having had his certificate suspended for failure to report an alcohol-related motor vehicle action, again twice ignored regulations requiring him to disclose such information to the Administrator.<sup>3</sup> This demonstrated non-compliance disposition is, in and of itself, a basis for revocation.<sup>4</sup>

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<sup>3</sup> We have previously held that an administrative suspension is a 'motor vehicle action' for purposes of section 61.15(d). See Administrator v. Kralej, NTSB Order No. EA-4581 (1997).

<sup>4</sup> As the law judge pointed out in his decision, the ultimate result of any appeal or *de novo* trial that respondent might obtain for the 1996 and 1997 incidents will not alter the fact that he suffered a motor vehicle action in each of those instances for refusing to submit to a requested breath test. Thus, regardless of what ultimately transpires, respondent will not be able to 'reverse' the finding that he violated section 61.15(d). Under the circumstances of this case, especially when compounded by willful disregard of regulatory obligations, we think respondent's three alcohol-related motor vehicle actions, imposed within a three-year time period, is also sufficient grounds for revoking his pilot certificates.

See Administrator v. Basulto, NTSB Order No. EA-4474 at 10 (1996).

**ACCORDINGLY, IT IS ORDERED THAT:**

1. The Administrator's appeal is granted; and
2. The Administrator's revocation of respondent's ATP and flight instructor certificates is affirmed.<sup>5</sup>

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, and BLACK, Members of the Board, concurred in the above opinion and order. GOGLIA, Member, did not concur, and submitted the following dissenting statement:

I dissent from the Board's decision to increase the sanction from a six-month suspension imposed by the Administrative Law Judge to a revocation of Respondent's ATP and flight instructor certificates.

The judge is in a position to evaluate the appropriate sanction based on the facts and circumstances and to assess the overall demeanor of the Respondent and the witnesses. As I said in my concurring opinion in Administrator v. Windwalker, Order No. EA-4638, "We have vested our law judges with the authority to evaluate these cases on our behalf, and more deference needs to be given to their decisions."

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<sup>5</sup> For the purposes of this order, respondent must physically surrender his airman certificates to an appropriate representative of the FAA pursuant to FAR § 61.19(f).